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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,876	01/06/2004	Yuriy V. Mikhaylik	57519.00115	4551
23619 7590 08/01/2007 SQUIRE SANDERS & DEMPSEY LLP TWO RENAISSANCE SQUARE, 40 NORTH CENTRAL AVENUE SUITE 2700 PHOENIX, AZ 85004-4498			EXAMINER WEINER, LAURA S	
			ART UNIT 1745	PAPER NUMBER
			MAIL DATE 08/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/752,876	<b>Applicant(s)</b> MIKHAYLIK, YURIY V.	
	<b>Examiner</b> Laura S. Weiner	<b>Art Unit</b> 1745	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 3,12,14,15,28 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,8-11,13,16-20,22-27,30-35 and 37-43 is/are rejected.
- 7) ☒ Claim(s) 4,7,21 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse claims 1-2, 4, 6-11, 13, 16-27, 30-35, 37-43 of an electrolyte comprising cyclic ethers and inorganic nitrites in the reply filed on 2-5-07 is acknowledged. The traversal is on the ground(s) that there would not be a burden to search all the species. This is not found persuasive because there are a huge number of species to search for and by picking an elected species it allows for a better search. The requirement is still deemed proper and is therefore made FINAL.

The next species searched was where the N-O additive is an organic nitro compound.

2. Claims 3, 12, 14-15, 28 and 36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2-5-07.

### ***Terminal Disclaimer***

3. The terminal disclaimer filed on 6-22-07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/753,031 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-2, 5-6, 8-11, 13, 16-20, 22-27, 30-35, 37-43~~are~~ have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

5. Claims 8-11, 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8-11, 30 are rejected because it is unclear what is meant by "m" in the claims. It is unclear how a concentration can be measured in meters.

***Claim Rejections - 35 USC § 103***

6. Claims 1-2, 5-6, 13, 16-20, 22-27, 31-35, 37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choi et al. (US 2002/0192557).

Choi et al. teaches on page 5, Example 1, a battery comprising an anode comprising lithium metal, a cathode comprising sulfur and an electrolyte comprising 1M **LiSO<sub>3</sub>CF<sub>3</sub>** and a solvent comprising 1,3-dioxolane/diglyme/sulfolane/dimethoxy ethane. Choi et al. teaches on page 5, [0054], that the organic solvent for the electrolyte can be **dioxolane**, sulfolane, **tetrahydrofuran**, **dimethoxyethane**, **nitromethane** [*organic nitro compound additive, claim 5*], etc. Choi et al. teaches on page 2, [0029], that the lithium-

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sulfur battery comprises a case comprising a positive electrode, a negative electrode and a separator.

Choi et al. teaches the claimed invention teaching that the electrolyte comprises a  $\text{LiSO}_3\text{CF}_3$  salt and an solvent comprising cyclic ethers tetrahydrofuran and dioxolane or dioxolane and dimethoxyethane or dioxolane and sulfolane but does not specifically teach including nitromethane.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the electrolyte 1,3-dioxolane/diglyme/sulfolane/dimethoxy ethane or any combination thereof and include nitromethane in the electrolyte taught by Choi et al. because it is prima facie obvious to combine two compositions each of which is taught by prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose. See *In re Kerkhoven*, 205 USPQ 1069; *In re Susi*, 169 USPQ 423.

### ***Allowable Subject Matter***

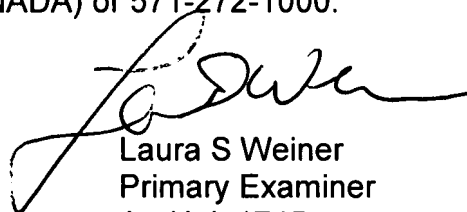
7. Claims 4, 7, 21, 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura S. Weiner whose telephone number is 571-272-1294. The examiner can normally be reached on M-F (6:30-4:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Laura S Weiner  
Primary Examiner  
Art Unit 1745

July 30, 2007